



Attorney Docket No. ARM-11206/00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF APPEALS AND INTERFERENCES

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Applicant: Richard M. Anderson

Serial No.: 09/139,298

Group Art Unit: 1761

Filing Date: August 25, 1998

Examiner: Curtis Edward Sherrer

Title: APPARATUS AND METHOD FOR PRODUCING GRAIN BASED
BAKED FOOD PRODUCTS

APPEAL BRIEF

Box Appeal Brief - Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 1450

Dear Sir:

I. Real Party in Interest.

The real party in interest is Richard M. Anderson, a U.S. citizen having a primary place of residence at 445 North River Road, Waterville, Ohio 43566.

II. Related Appeals and Interferences.

There are no other related appeals or interferences.

III. Status of Claims.

Claims 1, 4-8, 12-14, 16, 18 and 19 are pending in this applications. Claims 12-14 have previously been withdrawn from consideration, and accordingly claims 1, 4-8, 16, 18 and 19 are the subject claims of this appeal.

IV. Status of the Amendments.

A final rejection of these claims was mailed October 8, 2002. Applicant filed an amendment after final dated December 9, 2002. An Advisory Action issued by the Examiner

on December 27, 2002 indicated that the after final amendment would be entered for purposes of appeal.

V. Summary of the Invention.

The invention relates to a method of producing custom baked goods at the point of delivery to the end user. The method includes providing a machine at the point of delivery which produces baked goods from raw materials contained in the machine. The end user can select a product from one of a number of recipes and select a delivery time. The product is produced and delivered fresh to the end user. The machine (page 7, lines 22-24) includes an electronic process control unit (page 4, lines 1-4), an electronic consumer interface (page 6, lines 12-15 to page 7, lines 16-18), a housing (page 3, line 20), a customer delivery device (page 7, lines 5-7), a plurality of storage devices having raw ingredients (page 3, line 23), a dough making apparatus (page 5, line 7), and a baking station (page 6, lines 1-5). The consumer interface may be a keyboard, an automated phone answering device, or a modem for connection to a remote computer for receiving the order (page 7, lines 16-22).

The claims require providing a machine at a desired location (page 3, lines 19-21), connecting the consumer interface with the control unit (page 6, lines 9-14), storing a plurality of recipes for producing baked foods in the process control unit (page 6, lines 24-29), receiving an order from the consumer through the consumer interface (page 6, lines 10-14), and directing the process control unit to feed the raw ingredients into the dough making apparatus to mix the ingredients according to the order (page 7, line 25 to page 8, line 5), controlling the dough making apparatus with the process control unit to sequentially deliver mixture ingredients to a baking station for a predetermined time to produce a finished product (page 8, lines 11-19), and delivering the finished product to the consumer at the delivery station (page 8, line 19). The invention permits users to order baked grain-based food

products from a variety of recipes for delivery at a specified time. The order may be placed at the machine or remotely.

VI. Issues on Appeal.

As set forth in the Office Action mailed October 8, 2002, there are two issues, namely:

1. Whether the claims 1, 4-8, 16, 18 and 19 are unpatentable under 35 U.S.C. §103(a) over Litwak (Supermarket Business) or Muskai (PC Magazine) in view of Stear (Handbook of Breadmaking Technology) and further in view of Stern et al. (U.S. Patent No. 5,054,059); and
2. Whether the specification introduces new matter by the introduction of the terms “consumer” and “customer delivery station”.

VII. Grouping of the Claims.

Claims 1, 4-8, 16 and 18 are grouped together.

Claim 19 is grouped separately.

VIII. Argument.

A. 35 U.S.C. §103(a).

Claims 1, 4-8, 16 and 18 stand rejected under 35 U.S.C. §103 as being unpatentable over Litwak (Supermarket Business) or Muskai (PC Magazine) in view of Stear (Handbook of Breadmaking Technology) and further in view of Stern et al. (U.S. Patent No. 5,054,059). Applicant respectfully traverses.

Applicant's invention is a method for providing grain-based baked food products on demand from a single machine which may be placed at a single location such as a supermarket, convenience store, or the like. Applicant's method permits the end user to input an order into the automated machine which produces a selected baked product from one of a

variety of grain-based recipes on demand. Applicant's invention as set forth in claim 1 requires providing one machine at a desired location, the machine having an electronic process control, electronic consumer interface, a housing, and a customer delivery station. The housing contains raw materials and a baking apparatus. Claim 1 also requires connecting the consumer interface electronically with the control unit, storing a plurality of recipes in the control unit, receiving an order from the consumer, controlling the production of product, and delivering the finished product to the delivery station.

The Litwak and Muskai references disclose software products for automating a bakery business. Litwak discloses a modular software system for use in controlling a system for a commercial bakery. The system has running inventory, order entry, production reports, production guides which manipulate recipes to tell the baker how much flour to mix. Muskai discloses software for tracking small orders such as specialty cakes. Muskai discloses receiving a telephone call from a customer, jotting down the information, and later entering the information on a computer where it is sorted and stored. At the end of the day, the telephone orders are combined with those from the wholesale customers. The software develops a recipe from this information using another program. By recipe, Muskai is discussing the quantities of materials used.

The Stear reference is a primer for the baking of bread by a commercial bakery. Stear is directed to producing large-scale quantities of baked goods. Stear discloses automated control of temperature during the production. Stern et al. is directed to an interactive specialized dialing system for local control of the purchase of goods and/or services. Stern et al. is particularly directed to a hospital environment.

None of the references singly or combined teach permitting the end user to directly enter an order into which produces a baked product from raw materials. None of these

references teach an automated system which produces custom on demand delivery of baked goods from raw materials at the point of delivery. None of the references are directed to the problem of delivering custom baked goods on demand at the point of delivery.

There is no suggestion within the references to combine the references in the manner in which the Examiner has combined the references. The teachings of Litwak and Stear are directed to large scale operations, and even if combined with the other references, do not suggest a method which the end user can select and obtain a fresh baked good on demand from a single machine which produces the baked good from raw materials. The Examiner is using Applicant's teachings as a guide to constructing the Applicant's invention from bits and pieces of the prior art.

Claim 19 is dependent on claim 1 and stands rejected under the same references set forth above. This claim requires the step of determining a start time for initiating the dough making apparatus which is a predetermined time before the time for delivery. None of the prior art references teach, disclose or suggest an automated system for producing custom baked products which includes determining a start time for initiating a dough making apparatus at a predetermined time. Accordingly, claim 19 is not obvious in view of the cited art.

Applicant, respectfully, submits that none of the prior art references taken singly or together teach, disclose, or suggest the method set forth in claims 1, 4-8 and 18 or in claim 19.

B. New Matter/§112.

Applicant amended the claims and specification to add the terms "consumer" and the phrase "consumer delivery station". The Examiner objected to amendments in the specification under 35 U.S.C. §132 on the grounds that the amendments introduce new

matter. Additionally, the Examiner objected to the same amendments in the claims under 35 U.S.C. §112.

The original specification and claims as filed contained the word “customer”. As discussed more particularly above, much of the prior art cited by the Examiner was directed to commercial baking facilities. In some cases, the prior art discussed the handling of the orders received from the customers of those large commercial bakeries. Applicant attempted to distinguish between a commercial customer such as a retail store and an end user customer who purchases individual units of a baked product. In order to distinguish over the cited art, Applicant amended the specification and claims to utilize the word “consumer” rather than a customer in order to further this distinction.

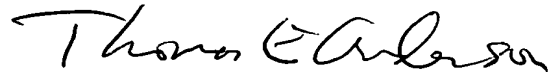
The Examiner objected to the amendments as being new matter. The Examiner has taken the position that the term “customer” is not considered to be the equivalent with “consumer”, stating “A customer is not always the consumer and a consumer is not always the customer.” It is unclear, however, why the amendment is considered new matter. Webster’s II New Collegiate Dictionary defines a “customer” as “1. One who buys goods or services”; and “2. *informal* A person with whom one must deal”. “Consumer” is defined in the same dictionary as “1. One that consumes”; and “2. A person who acquires goods or services; buyer”. The specification at page 7, lines 15-17 discloses “Customers can come into a store and custom order a baked food product to their own recipe criteria for immediate delivery or delivery at some future time.” The definitions for “consumer” and “customer” in Webster’s II New Collegiate Dictionary are virtually identical. However, the passage cited above from the specification clearly applies to customers who are end users or consumers. The addition, the word consumer is clearly within the disclosure and found in the original specification and in fact more properly describes the customer as being a consumer.

Applicant's amendments to add the word "consumer" are fully contemplated by the original specification. Clearly, there is no new matter being added by using the word "consumer".

IX. Conclusion.

Applicant respectfully submits that claims 1, 4-8, 16, 18 and 19 are not obvious in view of the prior art. Additionally, Applicant's amendments are not new matter, and accordingly, the claims are supported by the specification. Accordingly, Applicant respectfully requests reversal of the rejection under 35 U.S.C. §§103 and 112 and allowance of the claims.

Respectfully submitted,



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Lynn Hill

APPENDIX A

CLAIMS ON APPEAL

1. An automated process for producing a range of grain based baked food products from a supply of raw materials comprising:

providing one machine at a desired location, said machine having (a) an electronic process control unit and (b) an electronic consumer interface (c) a housing, and (d) a customer delivery device, said machine containing a plurality of storage devices having raw ingredients, a dough making apparatus and a baking station, said consumer interface having one from a group comprised of a keyboard, an automated phone answering device, and a modem for connection to a remote computer for receiving an order from a consumer, said order including a quantity and a type of food product;

connecting said consumer interface electronically with said control unit;

storing a plurality of recipes for producing a plurality of baked food products in said process control unit;

receiving an order from a consumer and with said consumer interface;

directing said dough making apparatus with said process control unit to feed said raw ingredients from said plurality of storage devices into said dough making apparatus to mix the ingredients according to said order;

controlling said dough making apparatus with said process control unit to sequentially deliver said mixture of ingredients to a baking station for a predetermined time to produce a finished product; and

delivering said finished product to said consumer at said delivery station.

4. The process according to claim 1 further comprising the step of separately delivering water to said raw ingredients during said mixing step.

5. The process according to claim 1 further comprising the step of extruding the mixture of ingredients after mixing the ingredients.

6. The process according to claim 1 further comprising the step proofing said mixture of ingredients before delivering said mixture to said baking station.

7. The process according to claim 1 further comprising the step of grinding said at least one grain drawn from a grain storage bin before mixing said ingredients.

8. The process according to claim 1 further comprising the step of providing a plurality of mixing chambers for separately mixing a like plurality of ingredient mixtures, each of said ingredient mixtures being different from any other of said ingredient mixtures.

16. The method of claim 1, wherein said electronic interface includes a telephonic interface for electronically receiving customer input from a telephone and storing the customer input in the process control unit.

18. The method of claim 1, wherein the receiving step further comprises receiving and storing a time for delivery of the desired quantity of food products.

19. The method of claim 1, wherein said directing step includes determining a start time for initiating the dough making apparatus which is a predetermined period of time before the time for delivery such that the food products are produced for delivery at the time for delivery.